applies with special force where the legitimate evidence tending to sustain the verdict was of very little weight.[17] But if the jury awarded very low damages or inflicted a very light penalty,[18] or the legitimate evidence was amply sufficient to support the verdict,[19] this would indicate that the error was harmless.

It would seem that the only true method of ascertaining whether the party was prejudiced by the evidence erroneously admitted would be to disregard all arbitrary rules and criteria, and carefully consider the particular case in hand in the light of its own peculiar circumstances.[20] This was done in the recent case of *Miller* v. *State* (Tex. Cr. App.), 185 S. W. 29, which was a trial for statutory rape. Evidence calculated to greatly damage the defendant's case was erroneously admitted but later withdrawn, and the jury was instructed not to consider it. The preponderance of the legitimate evidence clearly established the defendant's guilt; and the jury assessed the very lowest penalty which the law allowed. The appellate court held that the defendant was not prejudiced by the error and affirmed the conviction. This holding would seem clearly in accordance with reason and common sense. And when we look at the actual decisions rather than the language of the courts it seems that the majority of cases have been decided in accordance with the principles advocated above.

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THE RULE OF "EJUSDEM GENERIS."—The familiar rule of construction expressed in the maxim "*ejusdem generis*" was laid down by Lord Tenderden in the case of *Sandiman* v. *Beach* [1] in these words, "Where general words follow particular ones, the rule is to construe them as applicable to persons ejusdem generis." This rule is frequently invoked as a positive rule of law, and its arbitrary application is often sought; but the common holding of the cases and the trend of judicial comment seem to declare that it is only a means of arriving at the intention of the writer as expressed in his

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[17] Drury *v.* Territory, *supra.*

[18] Tullidge *v.* Wade, 3 Wills. 18; McDonald *v.* State (Tex.), 179 S. W. 880.

[19] Bell *v.* Clarion, *supra;* McDonald *v.* State, *supra.*

[20] In the well reasoned opinion in Drury *v.* Territory, *supra,* it was said: "The correct rule—that based upon sound reason, common experience, and good judgment—we think is, if the illegal evidence was of such a character as would ordinarily create such prejudice against the defendant as was reasonably calculated to make a fixed impression upon the minds of the jury and influence their verdict, and the court, from an examination of the whole case, is unable to see that such evidence did not probably affect the verdict, or that the verdict would not probably have been different, in any event, then the verdict should be set aside, and new trial ordered. This rule leaves the court to exercise some judgment as to the character and effect of the illegal evidence, and the question is not left to be determined by an arbitrary rule, without reference to the facts or conditions surrounding the case."

[1] Barn & C. 96.

words, and should be given weight only in so far as it serves that purpose.

Affirmatively stated, the operation of *ejusdem generis* is this: Where a specific enumeration of certain things which indicate a well defined class are followed by general words, a presumption is raised that the general words include only the other things of the class indicated. In cases with these elements present, the courts restrict the meaning of the general term to matters similar to those expressed.[2] The most cogent reasoning advanced in support of thus restricting the meaning of the general term is that were it intended to include everything under the general term, irrespective of its similarity to the specially named matters, then these would not have been thus set forth.[3]

From the above statement it is obvious that in as much as the maxim *ejusdem generis* is only a presumption raised by way of facilitating interpretation, it is subject to two logical qualifications which the courts generally recognize. First, where there is otherwise shown an intention to include under the general term, matters other than those which may be similar in nature to those specially named, then the plain intent should not be allowed to be defeated by a rule of construction.[4] Second, the general term is not restricted to a meaning similar to the specially named terms where the latter are exhaustive,[5] and this seems true even though the general intent of the writing may seem to be to affect only the matters specially named. The general terms cannot be made meaningless

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[2] United States *v.* First Nat'l Bank (C. C. A.), 206 Fed. 374, reversing 190 Fed. 336; Livermore *v.* Board of Freeholders, 31 N. J. L. 507; Brooks *v.* Kip, 54 N. J. Eq. 462, 35 Atl. 658; State *v.* Krueger, 134 Mo. 262, 35 S. W. 604.

[3] This reason has been attacked by two arguments. It is said that the specific enumeration may be made to show the principal matter to be affected. Thus, a statute making certain acts criminal when performed by a "ferryman or other person" was held not restricted to persons similar to ferrymen, the court saying that ferrymen were merely most prominent in the legislative mind, and, as the most likely offenders, were specially named. Russell *v.* Taylor, 4 Mo. 550. Again, this reason has been explained away in a case where a statute said, "sickness, absence from the state or other good cause," the court, in holding "other good cause" not to be limited to causes similar to those named, said that they were specially named to leave no doubt that they were considered good causes. National Bank *v.* Ripley, 161 Mo. 126, 61 S. W. 587.

[4] Casualty Co. *v.* First Nat'l Bank, 131 Iowa 456, 108 N. W. 1046; In re Rheinstrom & Son Co., 207 Fed. 119; Benson *v.* Chicago, etc., Ry. Co., 75 Minn. 163, 77 N. W. 798; Flower *v.* Witkowsky, 69 Mich. 371, 37 N. W. 364. In Casualty Co. *v.* First Nat'l Bank, *supra*, the court said: "Of the soundness of the general rule of construction here appealed to by which when general and specific terms are both employed in the same connection, the general terms are held to take their meaning from the specific, there can be no doubt; but it is never used to render words meaningless or to defeat a plainly expressed intent."

[5] United States *v.* Mescall, 215 U. S. 26; National Bank *v.* Ripley, *supra*; Gillock *v.* People, 171 Ill. 307, 49 N. E. 712. *Contra*, State *v.* Schuchman, 133 Mo. 111, 34 S. W. 842. See also, Banyer *v.* Albany Ins. Co. (N. Y.) 85 App. Div. 122.

by a mere rule of construction. A recent case, *Standard Combed Thread Co.* v. *Pennsylvania Ry. Co.* (N. J. L.), 95 Atl. 1002, clearly demonstrates that when the antecedent of the general term is exhaustive in scope, then the court cannot allow the maxim *ejusdem generis* to make the general term meaningless. In this case, the question arose as to the meaning of the clause in the uniform bill of lading declaring that, at points where the carrier has no agent, goods in cars on private or other sidings shall be at the owner's risk until attached to trains. With full regard to the familiar rule that bills of lading are construed strictly against the carrier,[6] the court held this phrase to include public sidings.

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ADMISSIBILITY OF BOOKS AND PAPERS ILLEGALLY SEIZED AS EVIDENCE IN A CRIMINAL PROSECUTION.—The question whether a party can be convicted of a crime upon proof procured from books and papers which have been taken from him without legal authority necessitates a consideration of those constitutional guarantees, appearing in the Federal Constitution and in the fundamental law of every state of this Union, which secure to the individual immunity from unreasonable searches and seizures and from being a witness against himself in a criminal case, and also of that rule of evidence which prohibits a criminal court from permitting a collateral issue to be raised with respect to the source of relevant and material evidence.

The Fourth Amendment to the Federal Constitution provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

This provision of the Constitution was intended to safeguard the rights of the people against the encroachments of unlawful and arbitrary power. Its incorporation into the Constitution seems to have followed as a natural consequence the struggle in the Colonies, and later in England, between the liberty of the individual and the exercise by petty officers of an arbitrary power granted by the Colonial "Writ of Assistance," [1] and the English "General Warrant;" [2]

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[6] Baltimore & O. Ry. Co. *v.* Doyle, 74 C. C. A. 245, 142 Fed. 669.

[1] A writ empowering revenue officers, in their discretion, to search suspected places for smuggled goods. The writ was declared by James Otis to be, "the worst instrument of arbitrary power, the most destructive of English liberty, and the fundamental principles of law, that ever was found in an Engish law book." See 2 WORKS OF JOHN ADAMS 523, 524.

[2] A search warrant issued for the purpose of searching private houses for the discovery and seizure of books and papers that might be used to convict their owner of the charge of libel. The law authorizing such warrants was declared invalid by Lord Camden in Entick *v.* Carrington, 19 How. St. Tr. 1029.